

REMARKS

Claims 1-10 are pending. Claim 1 has been amended to incorporate the preamble into the body of the claim to advance the prosecution of the present application and for further clarification of the claimed invention. Claims 11-22 have been canceled without prejudice as being directed to non-elected subject matter.

Rejection under 35 USC 103

Reconsideration is respectfully requested of the rejection of claims 1-10 as allegedly obvious over GB 768189 ('189) in view of EP 0337573 ('5730, Kim (US Patent 5,773,051), Bunch (US Patent 5,618,574) and Baensch (US Patent 3,796,812).

None of the references alone or in combination teach all of the elements of the claimed inventions which include: a uniform body, which is flaked, as a fish feed, having a water content of 1-30% and a thickness of 10-350 μ m. The examiner has picked and chosen the elements from five references to arrive at the claimed invention. This is certainly hindsight reconstruction, which is improper to reject claims under 35 USC 103.

In particular, the primary reference, GB '189 does not describe a fish feed. The feed is for animals, particularly fowls. Certainly, fowls do not eat in the same manner as fish. More importantly, the thickness of the flakes in the '189 patent are higher than the claimed range, 0.5 – 1.5mm, page 2, col. 1, line 24.

The first secondary reference, EP '573 also does not describe a fish feed. The feed is a pet feed, particularly for dogs and cats. Dogs and cats normally eat out of bowls and not

underwater picking food that might be floating or near the top of the aquarium. Although, the thickness of the flakes slightly overlap at the higher range, there is no specific teaching of a water content other than the blank statement: "suitable moisture content", page 2, line 36.

Suitable means what?

The second secondary reference finally gets to fish feed, the Kim patent. Kim teaches flaked fish feed having a water content of 15-25%, within the claimed range but does not describe a thickness within the claimed range. The examiner erroneously refers to the diameter of 1-10mm, "in thickness". This is not thickness. Kim discloses thickness as 0.5mm, column 2, line 32. Lines 31 and 32 describe the complete dimensions as a diameter of 1-10mm, thickness of 0.5mm and 15mm in length. The present application describes a range of 1-100mm in diameter at page 3 of the specification. In addition, Kim does not teach that the flakes are or need to be uniform. Kim is mainly concerned about fish feed that initially sinks then refloats. See col. 2 line 55 to col. 3, line 4.

Baensch describes a fish feed with overlap at the high range of thickness where the feed is made at least one flexible sheet, col. 1, lines 60-62. Later in column 1 and the top of column 2, Baensch is not apparently concerned with uniformed bodies. Baensch is also silent with regard to water content.

Finally, Bunch provides no disclosure with regard to the claimed invention except for recognizing in the Background Art section of the patent, col. 1, that flaked fish foods, among others, were known commercially and recognizing: "Such commercial fish foods suffer from a

number of disadvantages” (Col. 1, lines 27-29). No further details are provided with regard to the flaked fish foods. In fact, the Bunch invention is directed to the discovery that a fish food “comprising preserved immature insects, i.e., insect larvae or pupae or other immature forms ... is surprisingly effective in improving the growth rate and coloration of fish” (Col. 2, lines 26-31). It would thus appear that Bunch should not be combined with the other references and may even be teaching away from the subject matter of the other references cited by the Examiner.

In sum, we have one reference (Bunch) having nothing to do with the claimed invention. We have a primary reference (‘189) and a secondary reference (‘573 describing animal feeds being combined with other references to fish feeds without any showing or suggestion of equivalents between the two types of feeds. There is only one conclusion to be drawn and that is the combination of references is improper lacking suggestion and/or motivation. Thus, the Examiner’s rejection is deemed inappropriate and should be withdrawn.

Double Patenting

The rejection of claims 1-10 under the judicially created doctrine of obviousness –type double patenting over claims 1-9 of U.S. Patent No. 6,623,770 is now moot in view of the filing of a terminal disclaimer and fee accompanying this amendment.

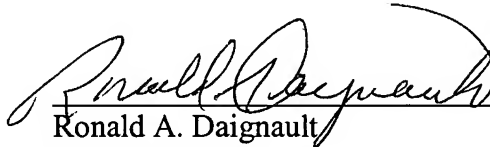
The Examiner is invited to contact the undersigned at 202-326-0330 to resolve any outstanding issues following entry of the present amendment.

Respectfully submitted,

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Date:

July 28, 2005



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